



General Assembly

January Session, 2009

Committee Bill No. 488

LCO No. 3808

03764SB00488AGE

Referred to Committee on Select Committee on Aging

Introduced by:
(AGE)

**AN ACT CONCERNING THE METHOD OF STATE REIMBURSEMENT
TO NURSING HOMES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subsection (a) of section 17b-340 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2009*):

4 (a) [The] (1) Subject to the provisions of subdivision (2) of this
5 subsection, the rates to be paid by or for persons aided or cared for by
6 the state or any town in this state to licensed chronic and convalescent
7 nursing homes, to chronic disease hospitals associated with chronic
8 and convalescent nursing homes, to rest homes with nursing
9 supervision, to licensed residential care homes, as defined by section
10 19a-490, and to residential facilities for the mentally retarded which are
11 licensed pursuant to section 17a-227 and certified to participate in the
12 Title XIX Medicaid program as intermediate care facilities for the
13 mentally retarded, for room, board and services specified in licensing
14 regulations issued by the licensing agency shall be determined
15 annually, except as otherwise provided in this subsection, after a
16 public hearing, by the Commissioner of Social Services, to be effective
17 July first of each year except as otherwise provided in this subsection.

18 Such rates shall be determined on a basis of a reasonable payment for
19 such necessary services, which basis shall take into account as a factor
20 the costs of such services. Cost of such services shall include
21 reasonable costs mandated by collective bargaining agreements with
22 certified collective bargaining agents or other agreements between the
23 employer and employees, provided "employees" shall not include
24 persons employed as managers or chief administrators or required to
25 be licensed as nursing home administrators, and compensation for
26 services rendered by proprietors at prevailing wage rates, as
27 determined by application of principles of accounting as prescribed by
28 said commissioner. Cost of such services shall not include amounts
29 paid by the facilities to employees as salary, or to attorneys or
30 consultants as fees, where the responsibility of the employees,
31 attorneys, or consultants is to persuade or seek to persuade the other
32 employees of the facility to support or oppose unionization. Nothing
33 in this subsection shall prohibit inclusion of amounts paid for legal
34 counsel related to the negotiation of collective bargaining agreements,
35 the settlement of grievances or normal administration of labor
36 relations. The commissioner may, in his discretion, allow the inclusion
37 of extraordinary and unanticipated costs of providing services which
38 were incurred to avoid an immediate negative impact on the health
39 and safety of patients. The commissioner may, in his discretion, based
40 upon review of a facility's costs, direct care staff to patient ratio and
41 any other related information, revise a facility's rate for any increases
42 or decreases to total licensed capacity of more than ten beds or changes
43 to its number of licensed rest home with nursing supervision beds and
44 chronic and convalescent nursing home beds. The commissioner may
45 so revise a facility's rate established for the fiscal year ending June 30,
46 1993, and thereafter for any bed increases, decreases or changes in
47 licensure effective after October 1, 1989. Effective July 1, 1991, in
48 facilities which have both a chronic and convalescent nursing home
49 and a rest home with nursing supervision, the rate for the rest home
50 with nursing supervision shall not exceed such facility's rate for its
51 chronic and convalescent nursing home. All such facilities for which

52 rates are determined under this subsection shall report on a fiscal year
53 basis ending on the thirtieth day of September. Such report shall be
54 submitted to the commissioner by the thirty-first day of December. The
55 commissioner may reduce the rate in effect for a facility which fails to
56 report on or before such date by an amount not to exceed ten per cent
57 of such rate. The commissioner shall annually, on or before the
58 fifteenth day of February, report the data contained in the reports of
59 such facilities to the joint standing committee of the General Assembly
60 having cognizance of matters relating to appropriations. For the cost
61 reporting year commencing October 1, 1985, and for subsequent cost
62 reporting years, facilities shall report the cost of using the services of
63 any nursing pool employee by separating said cost into two categories,
64 the portion of the cost equal to the salary of the employee for whom
65 the nursing pool employee is substituting shall be considered a
66 nursing cost and any cost in excess of such salary shall be further
67 divided so that seventy-five per cent of the excess cost shall be
68 considered an administrative or general cost and twenty-five per cent
69 of the excess cost shall be considered a nursing cost, provided if the
70 total nursing pool costs of a facility for any cost year are equal to or
71 exceed fifteen per cent of the total nursing expenditures of the facility
72 for such cost year, no portion of nursing pool costs in excess of fifteen
73 per cent shall be classified as administrative or general costs. The
74 commissioner, in determining such rates, shall also take into account
75 the classification of patients or boarders according to special care
76 requirements or classification of the facility according to such factors
77 as facilities and services and such other factors as he deems reasonable,
78 including anticipated fluctuations in the cost of providing such
79 services. The commissioner may establish a separate rate for a facility
80 or a portion of a facility for traumatic brain injury patients who require
81 extensive care but not acute general hospital care. Such separate rate
82 shall reflect the special care requirements of such patients. If changes
83 in federal or state laws, regulations or standards adopted subsequent
84 to June 30, 1985, result in increased costs or expenditures in an amount
85 exceeding one-half of one per cent of allowable costs for the most

86 recent cost reporting year, the commissioner shall adjust rates and
87 provide payment for any such increased reasonable costs or
88 expenditures within a reasonable period of time retroactive to the date
89 of enforcement. Nothing in this section shall be construed to require
90 the Department of Social Services to adjust rates and provide payment
91 for any increases in costs resulting from an inspection of a facility by
92 the Department of Public Health. Such assistance as the commissioner
93 requires from other state agencies or departments in determining rates
94 shall be made available to him at his request. Payment of the rates
95 established hereunder shall be conditioned on the establishment by
96 such facilities of admissions procedures which conform with this
97 section, section 19a-533 and all other applicable provisions of the law
98 and the provision of equality of treatment to all persons in such
99 facilities. The established rates shall be the maximum amount
100 chargeable by such facilities for care of such beneficiaries, and the
101 acceptance by or on behalf of any such facility of any additional
102 compensation for care of any such beneficiary from any other person
103 or source shall constitute the offense of aiding a beneficiary to obtain
104 aid to which he is not entitled and shall be punishable in the same
105 manner as is provided in subsection (b) of section 17b-97. For the fiscal
106 year ending June 30, 1992, rates for licensed residential care homes and
107 intermediate care facilities for the mentally retarded may receive an
108 increase not to exceed the most recent annual increase in the Regional
109 Data Resources Incorporated McGraw-Hill Health Care Costs:
110 Consumer Price Index (all urban)-All Items. Rates for newly certified
111 intermediate care facilities for the mentally retarded shall not exceed
112 one hundred fifty per cent of the median rate of rates in effect on
113 January 31, 1991, for intermediate care facilities for the mentally
114 retarded certified prior to February 1, 1991. Notwithstanding any
115 provision of this section, the Commissioner of Social Services may,
116 within available appropriations, provide an interim rate increase for a
117 licensed chronic and convalescent nursing home or a rest home with
118 nursing supervision for rate periods no earlier than April 1, 2004, only
119 if the commissioner determines that the increase is necessary to avoid

120 the filing of a petition for relief under Title 11 of the United States
121 Code; imposition of receivership pursuant to sections 19a-541 to 19a-
122 549, inclusive; or substantial deterioration of the facility's financial
123 condition that may be expected to adversely affect resident care and
124 the continued operation of the facility, and the commissioner
125 determines that the continued operation of the facility is in the best
126 interest of the state. The commissioner shall consider any requests for
127 interim rate increases on file with the department from March 30, 2004,
128 and those submitted subsequently for rate periods no earlier than
129 April 1, 2004. When reviewing a rate increase request the
130 commissioner shall, at a minimum, consider: [(1)] (A) Existing chronic
131 and convalescent nursing home or rest home with nursing supervision
132 utilization in the area and projected bed need; [(2)] (B) physical plant
133 long-term viability and the ability of the owner or purchaser to
134 implement any necessary property improvements; [(3)] (C) licensure
135 and certification compliance history; [(4)] (D) reasonableness of actual
136 and projected expenses; and [(5)] (E) the ability of the facility to meet
137 wage and benefit costs. No rate shall be increased pursuant to this
138 subsection in excess of one hundred fifteen per cent of the median rate
139 for the facility's peer grouping, established pursuant to subdivision (2)
140 of subsection (f) of this section, unless recommended by the
141 commissioner and approved by the Secretary of the Office of Policy
142 and Management after consultation with the commissioner. Such
143 median rates shall be published by the Department of Social Services
144 not later than April first of each year. In the event that a facility
145 granted an interim rate increase pursuant to this section is sold or
146 otherwise conveyed for value to an unrelated entity less than five years
147 after the effective date of such rate increase, the rate increase shall be
148 deemed rescinded and the department shall recover an amount equal
149 to the difference between payments made for all affected rate periods
150 and payments that would have been made if the interim rate increase
151 was not granted. The commissioner may seek recovery from payments
152 made to any facility with common ownership. With the approval of
153 the Secretary of the Office of Policy and Management, the

154 commissioner may waive recovery and rescission of the interim rate
155 for good cause shown that is not inconsistent with this section,
156 including, but not limited to, transfers to family members that were
157 made for no value. The commissioner shall provide written quarterly
158 reports to the joint standing committees of the General Assembly
159 having cognizance of matters relating to human services and
160 appropriations and the budgets of state agencies and to the select
161 committee of the General Assembly having cognizance of matters
162 relating to aging, that identify each facility requesting an interim rate
163 increase, the amount of the requested rate increase for each facility, the
164 action taken by the commissioner and the secretary pursuant to this
165 subsection, and estimates of the additional cost to the state for each
166 approved interim rate increase. Nothing in this subsection shall
167 prohibit the commissioner from increasing the rate of a licensed
168 chronic and convalescent nursing home or a rest home with nursing
169 supervision for allowable costs associated with facility capital
170 improvements or increasing the rate in case of a sale of a licensed
171 chronic and convalescent nursing home or a rest home with nursing
172 supervision, pursuant to subdivision (16) of subsection (f) of this
173 section, if receivership has been imposed on such home.

174 (2) (A) The Commissioner of Social Services shall develop a plan to
175 establish and administer a system for setting rates of payment to
176 licensed chronic and convalescent nursing homes and to rest homes
177 with nursing supervision for persons aided or cared for by the state
178 based on a prospective case-mix payment system. The commissioner
179 may develop a plan to establish and administer such system for setting
180 rates of payment to licensed residential care homes and to residential
181 facilities for the mentally retarded which are licensed pursuant to
182 section 17a-227 and certified to participate in the Title XIX Medicaid
183 program as intermediate care facilities for the mentally retarded.

184 (B) The plan developed pursuant to subparagraph (A) of this
185 subdivision shall incorporate nursing costs based on the level of care

186 required by each patient in the nursing home and other costs as
 187 determined by the commissioner.

188 (C) Not later than January 1, 2010, the commissioner shall submit
 189 the plan developed pursuant to subparagraph (A) of this subdivision,
 190 in accordance with the provisions of section 11-4a, to the joint standing
 191 committee of the General Assembly having cognizance of matters
 192 relating to human services and to the select committee of the General
 193 Assembly having cognizance of matters relating to aging. Not later
 194 than sixty days after the date of receipt of such plan, said joint
 195 standing committee and said select committee of the General
 196 Assembly shall advise the commissioner of their approval, denial or
 197 modifications, if any, of the plan, and if such plan is approved by said
 198 committees, such plan shall be implemented in accordance with this
 199 subparagraph for persons admitted to licensed chronic and
 200 convalescent nursing homes on or after January 1, 2011, and for all
 201 patients in licensed chronic and convalescent nursing homes by
 202 January 1, 2012. If the plan is to be so implemented, the Commissioner
 203 of Social Services shall report, in accordance with the provisions of
 204 section 11-4a, to the General Assembly by April 1, 2010, on statutory
 205 changes necessary for such implementation.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2009	17b-340(a)
-----------	--------------	------------

Statement of Purpose:

To establish payment rates for nursing homes that more accurately reflect the needs of residents.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. PRAGUE, 19th Dist.; SEN. HARP, 10th Dist.
 REP. SERRA, 33rd Dist.

S.B. 488